STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 20,914
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision of the Department for Children and Families, Health Access Eligibility Unit (HEAU) terminating his eligibility for Vermont Health Access Program (VHAP) benefits. The issue is whether the petitioner's income exceeds the program maximum.

FINDINGS OF FACT

1. The petitioner is a single individual who is self employed. He owns one business himself and is a half partner in three others. Following a review of his eligibility that began in February 2007, but was not completed for several months due to questions regarding the petitioner's income, the Department sent a notice on May 17, 2007 terminating his VHAP benefits effective June 1, 2007. The petitioner was found eligible for the Healthy Vermonters Program as of that date.

2. The petitioner filed an appeal of the Department's decision on June 14, 2007, too late to receive continuing benefits pending appeal.

3. One of the issues in this matter concerns whether losses from depreciation reported by the petitioner on his 2006 income taxes can also be deducted in determining his eligibility for VHAP. The other issue is whether net losses from some businesses can be used to offset the net income of another. Based on 2006 income tax filings provided by the petitioner, the Department in its decision determined that the petitioner's countable income from one of his half-owned business was $1,553.75 a month, without allowing depreciation. If the amount claimed by the petitioner for depreciation was allowed, his countable income would be reduced by about $80 a month. However, both amounts exceed the program maximum of $1,277 that became effective July 1, 2007 (the prior maximum being lower).

4. It appears that the petitioner also claimed net losses in 2006 totaling over $14,000 on three other businesses that he owns either singly or in partnership. The Department did not count any income from these businesses as available to the petitioner, but it did not deduct any of

these losses from the net income reported on his profitable business.

5. At status conferences held on June 26 and July 17, 2007, the petitioner did not dispute the Department's *calculations* of his income as reported on his 2006 taxes. His dispute was a legal one concerning whether depreciation and offsetting business losses should be factored into the determination of his countable income for VHAP. However, at the July status conference he alleged for the first time that his 2007 income from his profitable business was much lower than in 2006. The Department agreed to allow the petitioner to file a new application based on his year-to-date 2007 income, and continue the appeal to see if any issues remained following consideration of this new information.

6. On August 1, 2007, based on this new information, the Department found the petitioner eligible for VHAP, effective that date. However, the Department did not make the petitioner's VHAP coverage retroactive for June and July 2007. Inasmuch as the petitioner incurred uncovered medical expenses in those months, he continues to appeal the termination of his coverage effective June 1.

ORDER

The Department's decision is affirmed.

REASONS

Under the VHAP regulations, all earned income, except a $90 disregard for each earner, is included as countable income for eligibility. Income from self-employment is determined by deducting business expenses from gross receipts. W.A.M. §§ 4001.81(a)-(e). The regulations specifically provide that "depreciation" is not a countable business expense. W.A.M. § 4001.81(d)(4).

The regulations provide only that "business expenses (self-employment only) . . . are deducted from gross earned income". W.A.M. § 4001.81(c). Although the regulations are not more explicit on this point, as an apparently-longstanding matter of "procedure" the Department does not allow net self-employment losses from one or more businesses to offset other self-employment business gains. P.P.&D. Memo, Facing Page P-2122(B)(4), 3/7/95.[1] Inasmuch as this policy does not appear arbitrary, is not irrational,[2] and is

[1] This is consistent with the policies under Medicaid, RUFA, and Food Stamps. (See W.A.M. §§ M352, 2253.2, and 273.11(a), respectively, although a specific exception for farmers is made under Food Stamps.)
[2] In determining eligibility for public benefits, it does not seem unfair to consider a presumption that individuals have a choice in whether to engage in unprofitable activities.

not plainly inconsistent with the regulations, it must be upheld.

As noted above, the petitioner did not allege a change in his income in 2007 until after the effective date of the Department's decision in this matter (June 1, 2007). There is no indication that the Department did not act on that new information and find the petitioner eligible for VHAP in a timely manner (August 1, 2007). See W.A.M. §§ 4002.2 – 4002.32. Therefore, there does not appear to be any basis to find the petitioner to have been eligible for VHAP in June or July 2007.[3]

In light of the above, the Board is bound to affirm the Department's decision in this matter. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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[3] Had the petitioner requested a hearing prior to June 1, 2007, he may have been eligible to continue to receive VHAP in those months pending the resolution of his appeal. However, there is no indication that his failure to have done so was in any way attributable to the Department. Furthermore, as noted above, the Department did not terminate his benefits for the three months it took the petitioner to verify his income following his February 2007 reapplication.